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OFFICE OF PETITIONS

In re Application of :
Shi et al. :
Application No. 09/803,285 : ON PETITION
Filed: 9 March, 2001 :
Attorney Docket No. CM03333J :
:

This is a decision on the petition under 37 CFR 1.137(b) and response to the Notice of Omitted Items, both filed on 18 April, 2003 which is treated as a petition under 37 CFR 1.137(b) and under 37 CFR 1.53.

The petition under 37 CFR 1.137(b) is **DISMISSED AS MOOT**.

The petition under 37 CFR 1.53 is **DISMISSED**.

A review of the Official file reveals that on 9 March, 2001, the application was filed. On 23 April, 2001, Initial Patent Examination Division mailed a Notice of Omitted Items in a Nonprovisional Application, stating that the application had been accorded a filing date of 9 March, 2001, but that Figures 15, 17, and 18 described in the specification appeared to have been omitted. A two (2) month period was set for reply.

On 18 April, 2003, petitioners filed the present petition, accompanied by a preliminary amendment including four (4) sheets of drawings containing Figures 15, 16, 17, and 18.

Petitioners should note that the Notice mailed on 23 April, 2001, did not require a response to avoid abandonment of the application. Therefore, the application is not abandoned and the petition under 37 CFR 1.137(b) is dismissed as moot.

The mailing of a "Notice of Omitted Items" permits the applicant

to either: (1) promptly establish prior receipt in the PTO of the drawing(s) at issue (generally by way of a date-stamped postcard receipt (MPEP 503)), or (2) promptly submit the omitted item(s) in a nonprovisional application and accept the date of such submission as the application filing date. An applicant asserting that the missing item(s) were in fact deposited in the PTO with the application papers must file a petition (and the appropriate petition fee) with evidence of such deposit. An applicant desiring to submit the omitted drawings in a nonprovisional application and accept the date of such submission as the application filing date must file any omitted item(s) with an oath or declaration in compliance with 37 CFR 1.63 and 1.64 referring to such item(s) and a petition under 37 CFR 1.182 (with the petition fee under 37 CFR 1.17(h)) requesting the later filing date within two months of the date of the "Notice of Omitted Items" (37 CFR 1.181(f)).

In this case, however, petitioners neither assert that the missing drawings were deposited on 9 March, 2001, nor request the 18 April, 2003 (the date the drawings were supplied), filing date. Rather, petitioners have simply filed the drawing sheets with a preliminary amendment. Preliminary amendments may be entered as long as they contain no new matter. The preliminary amendment will be reviewed by the examiner for new matter.¹

Petitioners are reminded that the two (2) month period for replying to a Notice of Omitted Items is not extendable under 37 CFR 1.136(a) or (b). In the absence of a timely filed petition, the application will be processed using only the papers present in the USPTO on the date of deposit.

The application will be processed and examined using only the application papers present on 9 March, 2001. The drawing sheets filed on 18 April, 2003, will not be processed as part of the original application papers, but will be treated as a part of the preliminary amendment.

As the application is not abandoned, the petition under 37 CFR 1.137(b) is unnecessary, and the petition fee will be credited to counsel's deposit account, No. 50-2117. The petition under 37 CFR 1.53, however, was not necessitated by any error on the part of the Office. Thus, the \$130.00 petition fee will not be refunded.

¹37 CFR 1.121(b).

The application file is being forwarded to the Office of Initial Patent Examination for further processing with a filing date of 9 March, 2001, using the application papers filed on that date.

Telephone inquiries concerning this matter may be directed to the undersigned at (703) 308-6918.



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